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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

In re COUNTRYWIDE FINANCIAL  
CORP. MORTGAGE-BACKED  
SECURITIES LITIGATION CASES

THRIVENT FINANCIAL FOR  
LUTHERANS, et al.,

Plaintiffs,

v.

COUNTRYWIDE FINANCIAL  
CORPORATION, et al.,

Defendants.

Case No. 11-ML-2265-MRP  
(MANx)

**THRIVENT'S RESPONSE TO  
DEFENDANTS' MOTIONS TO  
DISMISS THE AMENDED  
COMPLAINT**

Judge: Hon. Mariana R. Pfaelzer  
Courtroom: 12

Case No. 11-CV-7154-MRP (MANx)

Thrivent Financial for Lutherans, Thrivent Life Insurance Company, Thrivent Mutual Funds, Thrivent Variable Annuity Portfolio Funds, Thrivent Defined Benefits Plan Trust and Thrivent Financial for Lutherans Foundation (collectively, “Thrivent”) respectfully submit this memorandum in opposition to the motions to dismiss filed by: (i) Defendants Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Home Loans Servicing, LP, Countrywide Securities Corporation, Countrywide Capital Markets, LLC, CWALT, Inc., CWMBBS, Inc., CWABS, Inc. and CWHEQ, Inc. (the “Countrywide Defendants”) [ECF No. 175]; (ii) Bank of America Corp., BAC Home Loans Servicing, L.P. and NB Holdings Corp. (the “Bank of America Defendants”) [ECF No. 181]; (iii) Angelo Mozilo (“Mozilo”) [ECF No. 177]; and (iv) David A. Sambol, (“Sambol”) [ECF No. 179] (collectively, “Defendants”).

## **I. INTRODUCTION**

By Order dated February 17, 2012, this Court denied Defendants’ motions to dismiss Thrivent’s claims for fraud, fraudulent inducement and reckless misrepresentation. ECF No. 170 (“February 17 Order”). The Court also dismissed without prejudice claims relating to transfer of title, negligent misrepresentation, aiding and abetting and successor liability and granted Thrivent leave to amend. On March 9, 2012, Thrivent filed an Amended Complaint. ECF No. 172. On March 30, 2012, Defendants filed motions to dismiss. Defendants do not challenge the fraud, fraudulent inducement or reckless misrepresentation claims this Court previously sustained. Rather, Defendants repeat arguments challenging the claims relating to transfer of title, negligent misrepresentation and aiding and abetting. As explained in the Amended Complaint, Thrivent did not amend these allegations and included them solely to preserve appellate rights. Amended Complaint at n.1.

## **II. THRIVENT’S RESPONSE TO DEFENDANTS’ MOTIONS**

Thrivent hereby incorporates all of its arguments set forth in its opposition to Defendants’ initial motions to dismiss. ECF No. 157. Thrivent reserves all

1 appellate rights with respect to these claims, including the right to argue that the  
 2 February 17 Order was decided incorrectly. *Forsyth v. Humana, Inc.*, 114 F.3d  
 3 1467, 1474 (9th Cir. 1997).

4 The Amended Complaint adds new allegations supporting Thrivent's claims  
 5 for successor liability, actual fraudulent transfer and constructive fraudulent  
 6 transfer against the Bank of America Defendants. The amended factual allegations  
 7 supporting these claims are materially identical to those asserted in *Allstate Ins.*  
 8 *Co., et al. v. Countrywide Fin. Corp., et al.*, No. 2:11-cv-5236-MRP (MANx), 2012  
 9 WL 335730 (C.D. Cal. Feb. 2, 2012) ("*Allstate II*"). After full briefing and oral  
 10 argument, this Court dismissed the successor liability claims in *Allstate II* with  
 11 prejudice. Rather than waste the Court's and the parties' resources re-litigating  
 12 issues this Court previously considered and decided, Thrivent hereby incorporates  
 13 plaintiffs' arguments in *Allstate II* and preserves all such arguments for appeal,  
 14 including the right to argue that *Allstate II* was decided incorrectly for any reason.  
 15 Plaintiffs do not oppose entry of the Bank of America Defendants' proposed Order.

### 16 **III. CONCLUSION**

17 For the foregoing reasons, Thrivent hereby incorporates its arguments in  
 18 opposition to Defendants' previous motions to dismiss, as well as the arguments in  
 19 *Allstate II*, in opposition to Defendants' motions to dismiss [ECF Nos. 175, 177,  
 20 179, 181] for the purposes of preserving appellate rights. *See Forsyth*, 114 F.3d at  
 21 1474.

22 Dated: April 23, 2012

Respectfully submitted,

23 /s/ Timothy A. DeLange

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